



JUL 18 1988

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In the Matter of	:	Case No: 88 TLC 10
U.S. DEPARTMENT OF LABOR	:	
Claimant	:	
	:	
vs.	:	
	:	
TRI COUNTY GROWERS, INC.	:	
Employer	:	
.....	:	

William J. Haltigan
Regional Administrator

Susan Snowden, Esq.
For the Employer

BEFORE: VICTOR J. CHAO
Administrative Law Judge

DECISION AND ORDER

This proceeding arises out of claimed violations of 20 C.F.R. §655.110(g), and the denial of H-2A temporary labor certification. The Department of Labor and the Employer, were involved in litigation resulting in an Order granting labor certification by Judge Maxwell of the U.S. District Court for the Northern District of West Virginia. The Department then alleged certain violations by the Employer regarding the following complainants: Alson Clayton, Oscar Marshall, Nikel Ostine, Meprius Mathurin, and Julner Derisma. Case Nos. 87 JSA 5; 87 JSA 8. On July 22, 1987, Administrative Law Judge Glenn Lawrence issued a Decision and Order affirming the denial of temporary labor certification for the coming year and ordering restitution for the complainant Alson Clayton. Case No: 87 JSA 5. On January 21, 1988, Administrative Law Judge Leonard Lawrence issued a Decision and Order affirming the denial of temporary labor certification for the coming year. Case No: 87 JSA 8. In a letter, dated June 24, 1988, the Regional Administrator, William J. Haltigan notified the Employer that it will not be granted a temporary labor certification in 1988. On July 1, 1988, the Employer sent a telegram requesting an expedited administrative judicial review of the regional administrator's denial of certification. On July 12, 1988, I received the appeal file. Since a decision can be reached on the appeal file, a formal evidentiary hearing need not be held.

Position of the Parties

The Regional Administrator stated that the Employer committed substantial violations pursuant to 20 C.F.R. §655.110(g). These violations were adjudicated in the above-mentioned cases and resulted in the Decisions and Orders of the above-named Administrative Law Judges. Based on the Orders, the Employer is ineligible to apply for temporary labor certification in 1988.

The Employer alleges five grounds for review. First, the actions of the regional administrator constitute a denial of due process since he is enforcing an order which is pending appeal to the U.S. District Court for the Northern District of West Virginia; second, pursuant to 20 C.F.R. §655.110(g) the alleged violations did not occur within the past two years; third, the alleged violations are not substantial violations under the regulations; fourth, there are extenuating circumstances; fifth, the purpose of the denial of certification is to coerce settlement of the cases pending before the District Court, and that such purpose demonstrates prejudice, bias, and is arbitrary, capricious, and an abuse of discretion.

Discussion and Conclusion

The Employer seeks relief from the Regional Administrator's denial of temporary labor certification; however, the Regional Administrator is merely enforcing the Orders issued by the previous Administrative Law Judges. The Orders of the previous Judges constitute final agency action, and I will not review such decisions. Appeal to the Office of Administrative Law Judges of an order enforcing denial of temporary labor certification is not the proper forum to reconsider the previously issued Decisions.

With regard to the Employer's first argument, enforcement of the Orders of the previous judges does not deny due process. The relief which the Employer seeks on appeal is properly sought before such appellate court. With regard to the Employer's second and third arguments, to the extent the Employer seeks review of the Decisions of the previous Administrative Law Judges, those such Decisions constitute final agency action and relief should be sought from the U.S. District Court. With regard to the Employer's fourth argument, the extenuating circumstances alleged by the Employer relate to the previous Administrative Law Judges' decisions. I find no extenuating circumstances which would preclude enforcement of the Orders denying temporary labor certification. Lastly, with regard to the Employer's fifth argument, the improper conduct alleged by the Employer involves the settlement negotiations of the cases adjudicated by the previous Administrative Law Judges. Relief from such improper conduct is again properly sought from the U.S. District Court. To the extent the Employer is arguing that the Regional Administrator has engaged in improper conduct in the issuance of the order enforcing the previous Administrative Law Judges' orders, I find no such conduct which would preclude enforcement of the previous orders.

ORDER

The denial of temporary labor certification in 1988 by the Regional Administrator is hereby AFFIRMED.

VICTOR J. CHAO
Administrative Law Judge

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Washington, DC
VJC:AS